Service Date: August 10, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MONTANA

IN THE MATTER OF The Application)	UTILITY DIVISION
of MONTANA-DAKOTA UTILITIES, INC.)	
for Authority to Establish Permanent)	DOCKET NO. 82.6.40
Increased rates for Gas Service)	
in the State of Montana)	ORDER NO. 4918c

ORDER ON MOTION FOR RECONSIDERATION FINDINGS OF FACT

- 1. June 2, 1983, the Commission issued Order No. 4918b, which disposed of all matters then pending.
- 2. On July 1, 1983, the Montana-Dakota Utilities Co. (MDU) filed a Petition for Reconsideration concerning the following issues:
- (1) Off-System Sales to CIG;
- (2) Concept of a Commission Approved Gas Mix;
- (3) Rate of Return of Equity Capital;
- (4) Commissions Treatment of Known and Measurable Changes to Certain Expense Items.
- (5) Late Payment Charge.

OFF-SYSTEM SALES TO CIG

- 3. In Order No. 4918b, the Commission determined that the loss of off-system sales to Colorado Interstate Gas Company (CIG) should not result in a reallocation of fixed system costs. MDU had requested such a reallocation, with a resulting \$1,441,467 increase in revenue responsibility for Montana ratepayers.
- 4. In rejecting the request, the Commission relied on MDU's assertion that CIG was obligated to purchase gas at contract levels. No other party contested this position, and the

Company was actively pursuing an administrative appeal before the Federal Energy Regulatory Commission (FERC) which sought an order compelling CIG to resume gas takes at contract levels.

- 5. On June 23, 1983, the FERC issued an order dismissing MDU's complaint against CIG. That order made clear the FERC's position that CIG does not have a minimum purchase obligation by the terms of the original FERC order certificating the off-system sale.
- 6. In view of this development, MDU renews its argument that the Commission is pre-empted from specifically allocating a revenue responsibility to CIG, since the FERC has exclusive jurisdiction over sales of gas for resale in interstate commerce. The Commission accepts MDU's argument thus framed. This agreement, however, does not exhaust the Commission's responsibilities and conclude the fate of the disputed investments. In accepting MDU's pre-emption argument, the Commission finds that the proposed revenue increase of \$1,441,467 (Finding of Fact No. 3) must be-adjusted to reflect the rate base, rate of return, revenues, and expenses approved in Order No. 4918b of this proceeding. The Company is, therefore, directed to file work papers which show the calculation of the proper amount of revenue increase resulting from the loss of the CIG sales.
- 7. Section 69-3-109, MCA, requires that property on which a utility earns a return must be "actually used and useful." In Finding of Fact Nos. 84 and 85, Order No. 4918b, the Commission did find "serious indications that MDU's requested reallocation would run afoul of the requirement that property be actually used and useful. "Because of the parties' position on CIG's contractual obligations, however,

this issue was deemed moot and not fully addressed.

- 8. The record contains testimony from both Company and MCC wit nesses indicating that, given a reduction in CIG takes, certain MDU proper may not be used and useful. MCC witness Hess noted that he had not pursued that particular inquiry, since he had recommended no reallocation.
- 9. The Commission concludes that the existing record does not adequately address the used and useful requirement. This inquiry was forestalled by circumstances which have changed since the hearing was held and a final order issued.
- 10. In order to have a fully developed record on which to base consideration of MDU's used and useful property, the Commission finds that this issue should be separately considered in a Phase II hearing. This procedure will allow all parties a fair opportunity to address the Commission's concern, and will also protect the interests of Montana ratepayers. All other issues will be finally disposed of by Order No. 4918b and this Order on MDU's Petition for Reconsideration.
- 11. Finally, the Commission notes its concern that MDU not lose its incentive to pursue vigorously all legal remedies arising from the CIG contract. This concern is heightened by the Company's assertion that it has nothing to gain from off-system sales. It seems reasonably prudent that a party to a contract assure itself that its interpretation of that contract is legally enforceable. The Commission, therefore, will continue to monitor MDU's course of action with respect to the contract, and requests MDU to apprise it of future developments.

COMMISSION APPROVED GAS MIX

- 12. MDU contends that the Commission's determination in Finding of Fact Nos. 123-125, regarding the level of company production, lacks sufficient explanation as to why the general concept of minimum Company production is proper, and why the specific level of 4.3 Bcf is justified. Although Finding of Fact No. 123 cites prior orders, MDU claims that the Commission has never explained its company production rationale in any docket.
- 13. A quick reading of the Commission's orders affecting MD's gas operation over the past several years readily demonstrates continuing attention to the Company's gas mix, particularly with regard to Company production. MDU singled out the order in Docket No. 81.7.62 as failing to discuss Company production. While it is true that Order No. 4834c does not explicitly address this issue, it does implicitly accept a revised company production level of 4,259,057 Mcf a revision which stands against the background of several discussions on gas mix and company production. See, e g , Docket No. 6733, Order No. 4588, Finding of Fact Nos. 5-8; Docket No. 80.4.1, Order No. 4726, Finding of Fact Nos. 10-13; Docket No. 80.10.87, Order Nos. 4742 and 4742a; Docket No. 80.7.54, Order No. 4784, Finding of Fact Nos . 71-74; and Docket No. 81.4. 45, Order No. 4802a, Finding of Fact Nos. 7 and 8 (wherein objections of intervenors were rejected on the basis of a reasonable gas mix assured by this Commission procedure).
- 14. In Order No. 4742, Finding of Fact No. 18, the Commission reiterated an earlier statement regarding the general concept of Commission approved mix:

Use of the mix approved in the last general rate case as a starting point allows the Commission to set rates which are responsive to a gas mix reviewed by all concerned parties and in light of other adjustments which consider the overall operating characteristics of the utility; rather than the narrowly defined arena afforded in a gas tracking case.

The Commission further explained in Order No. 4742a, Finding of Fact No. 5:

"The purpose of requiring an approved mix of company produced to purchased gas is to provide the current ratepayer the benefit of currently available low cost gas which acts as a buffer in times of rapidly rising gas costs."

- 15. The specific company production level of 4.3 Bcf was derived from the last approved gas mix, as clearly stated in Order No. 4918b. This level was deemed reasonable in view of these considerations: 1) 4.3 Bcf was found within a reasonable range of the Company's ability to produce 6.4 Bcf, and was based on Company experience documented in the last general rate case; 2) MDU presented no justification to further reduce company production; and 3) as a further test of reasonableness Company production was 4.9 Bcf for the 12 months ending July, 1982.
- 16. In view of this continuing dialogue among MDU, the Commission, and other interested parties, the Commission rejects MDU's assertions regarding lack of rationale for an approved gas mix.
- 17. The Commission is concerned that MDU not avoid its burden of proving the reasonableness of all expenses claimed by it in requesting rate increases. Cost of gas is certainly

within that requirement. The Commission emphasizes that it has not set an eternal requirement for company production. Rather, some reasonable level must be set in order to effectively implement MDU's gas cost tracking procedure; since gas costs are always subject to scrutiny for reasonableness, the Commission chose to streamline the trackers by making this inquiry during general rate cases. To expedite these considerations in the interests of all parties, the Commission deems the last approved gas mix as reasonable, unless MDU can show the reasonableness of new gas cost expense associated with a changed mix. In its Petition for Reconsideration, the Company points to no testimony addressing this issue, and the Commission finds no justification in the record to reduce Company production below 4.3 Bcf.

18. As noted above, gas mix issues were excluded from consideration in tracking cases in order to further the expedited nature of those proceedings. In fact, no material revenue impacts are realized in this general case as a result of the findings regarding gas mix, and the Company has not claimed any. The Commission appreciates the unique situation in which MDU has found itself as a result of off-system sales losses. With that in mind, Company gas mix issues were more fully explored in the hearing in Docket No. 83.5.34. The Commission notes that it will depart from preferred practice and consider gas mix again in that gas cost tracking application. The Commission rejects the remainder of MDU's arguments on this issue, pending a final decision in Docket No. 83.5.34.

RATE OF RETURN ON EQUITY CAPITAL

19. In its motion for reconsideration, MDU disagreed with the

Commission's determination of cost of common equity. MDU argued that Dr. Smith of MCC did not perform a D.F. analysis and that Dr. Smith had no independent measure of growth as input data. The Company also maintains that this Commission has consistently found that natural gas operations are more risky than electrical operations and has in the past accordingly reflected that risk differential in a higher authorized return for natural gas operations; however, the return on equity authorized for the gas operations of MDU and the electrical operations of MPC are essentially identical.

- 20. The Commission finds that Dr. Smith, expert witness for MCC, did in fact perform a D.F. analysis in a methodology which reflects her interpretation of the equation: dividend yield + growth = cost of equity. The Commission finds the model and study themselves proper in their analytical approach toward measuring growth. While Dr. Smith's recommendation arising from this study was not accepted in its entirety, the Commission did rely on her growth estimates which were independently calculated as shown in her updated Appendix B, Tables B-2 and B-4. This approach is readily apparent in Order No. 4918b, Finding of Fact No. 46.
- 21. Concerning the Company's assertions of risk differential, the Commission believes that the various factors affecting risk for gas and electric operations are ever changing and that an assumption that gas operations are necessarily more risky than electric operations, given current conditions, would be grossly inaccurate, and totally without support in the present record. Finally, the Commission determines that the explanation given in Order No. 4918b adequately supports the approved cost of common equity. The Company's Motion for Reconsideration of this particular issue is, therefore, denied.

COMMISSION'S TREATMENT OF KNOWN AND MEASURABLE CHANGES TO CERTAIN EXPENSE ITEMS

22. This issue appeared in MDU's motion for reconsideration, but the Company later withdrew its motion concerning this issue in a letter received by the Commission July 20, 1983. The Commission accepts the Company's withdrawal of this requested reconsideration.

LATE PAYMENT CHARGE

- 23. In Order No. 4918b, the Commission rejected MDU's proposed late payment charge. (Order No. 4918b, Finding Nos. 114-119.) MDU's proposal consisted of a 1 percent charge applied to any unpaid balance as of the subsequent billing date. (Edh. P, pp. G-8)
- 24. In rejecting the MDU proposal, the Commission found that "any excessiveness in the balance of Montana delinquent accounts is likely to be reduced by a recent modification of the winter termination rules, along with MDU's more thorough understanding and compliance with those rules pertaining: to winter shutoffs." The Commission also cited a "lack of evidence clearly conceptualizing the economic benefit of a late payment charge. . . ".
- 25. In its Motion for Reconsideration, MDU argues that the record does clearly establish the benefits of a late payment charge and that those benefits include the avoidance of the termination policy which the Commission cites as a substitute for a late payment charge. (Motion, p. 11)
- 26. Upon reconsideration, the Commission accepts the late

payment charge under three conditions. First, the Commission feels that the proposed assessment of a charge applied to the balance at the subsequent billing date is too harsh. The Company is authorized to apply a 1 percent charge to any unpaid balance as of the second subsequent billing date, rather than the first.

- 27. Secondly, the Company is required to ensure that the authorized late payment charge is not applied to any account where a written payment schedule has been arranged and complied with, or where the LEAP program is being utilized up to the point where the funds are exhausted and the recipient has full responsibility of the account. In the first instance, the account is treated as no longer delinquent, providing the established payment plan is followed. Regarding the LEAP program, the Commission believes that the rationale for a late payment charge no longer applies when the customer does not have full responsibility for the account.
- 28. Lastly, the Company is directed to observe and to document the realized benefit resulting from the late payment charge and report those benefits to the Commission in the Spring of 1984. The report should clearly document the affect of the late payment charge on 1) termination requests and 2) delinquent balances. Based on this information, the Commission intends to reevaluate the late payment charge to determine if it is, in fact, meeting the objectives for which it is designed without undue burden on ratepayers.

CONCLUSIONS OF LAW

1. The Applicant, Montana-Dakota Utilities Company, furnishes natural gas service to consumers in Montana, and is a "public utility" under the regulatory jurisdiction of the Montana

Public Service Commission. §69-3-101, MCA.

- 2. The Commission properly exercises jurisdiction over the Applicant's rates and operations. §69-3-102, FICA, and Title 69, Chapter 3, Part 3, MCA.
- 3. Where the Federal Energy Regulatory Commission (FERC) has established tariffs for off-system sales and explicitly ruled that an off-system customer is not required to take any specific amount of gas, the Commission is pre-empted from directly attributing revenue responsibility to that off-system customer on the theory that off-system sales should occur at a specific minimum. Federal Power Commission v. Corporation Commission, 362 F.Supp. 522 (W.D. Okla. 1973), aff'd 415 U.S. 961 (1973).
- 4. A public utility is entitled to earn a fair return only on property which is actually used and useful during the period when rates reflecting that return will be in effect. 69-3-109, MCA.
- 5. The Commission is charged with full "supervision, regulation and control" of public utilities. 69-3-102, MCA.
- 6. A public utility seeking increased rates has the burden of showing its claimed expenses are reasonable. Montana Power Co. v. PSC, _Mont. , _P.2d , 40 St. Rptr. 805, 809 (1983).
- 7. The basis for both the concept and a specific level of an approved Company gas mix has been developed and explained in several prior Commission orders, as noted above. The Commission has not acted arbitrarily or capriciously in this regard.

8. The rate level and rate structure approved herein are just, reasonable, and not unjustly discriminatory. §69-3-330, MCA.

ORDER

- 1. Montana-Dakota Utilities Company's application in Docket No. 82.6.40 is hereby separated into two phases. Phase I shall consist of all issues previously raised, excepting reallocation of fixed system costs associated with the loss of off-system sales. Phase II shall consider the reallocation issue, and specifically whether all property included by MDU in its rate base is actually used and useful in serving Montana ratepayers.
- 2. Phase I of Docket No. 82.6.40 is complete. MDU shall file rate schedules which reflect annual revenues of \$4,660,000 as originally allowed in Order No. 4918b.
- 3. MDU shall file tariffs implementing a late payment charge with the conditions as specified in this Order.
- 4. The Company is further authorized to file tariffs reflecting an annual increase for Montana's portion of the loss of the CIG sales. This portion of MDU's requested increase is the subject of Phase II in this Docket and is approved subject to rebate with interest as provided in 69-3-302, MCA. MDU must file worksheets along with their tariffs showing the calculation of the revenue increase so that said increase reflects the rate of return, rate base, revenues, and expenses approved in Order No. 4918b of this, proceeding.
 - 5. Rate schedules filed shall comport with all Commission

determinations set forth in Order No. 4918b, as modified by this Order, and in such manner so as to increase rates in accordance with the volumetric pricing methodology maintaining the 25 percent differential between winter discount and remainder of year rates.

- 6. All motions not ruled upon are denied.
- 7. This Order is effective for services rendered on and after August 8, 1983.

DONE AND DATED this 8th day of August, 1983, by a vote of 3 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

THOMAS J. SCHNEIDER, Chairman

CLYDE JARVIS, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Madeline L. Cottrill Secretary

(SEAL)

NOTE:

You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.